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§ 55. Practice and procedure generally; jurisdiction and venue

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The practice and procedure in creditors' bills depend to a great extent upon the statutes and common law of the particular jurisdiction involved having to do with practice and procedure in civil actions and proceedings generally.[1] A judgment creditor's bill to reach property of his or her debtor is an independent and separate proceeding which may be instituted in any court having jurisdiction to entertain it, whether or not it is the same court that entered the original judgment.[2]

Since a creditor's bill is basically an in rem proceeding,[3] jurisdiction may be obtained over nonresidents to the extent essential for the relief generally granted in a creditor's bill—namely, the appropriation of the defendant's property to the payment of the indebtedness due the plaintiff, through the seizure of such property within the territorial jurisdiction of the court and constructive service upon the nonresident.[4] On such service the court has jurisdiction to ascertain the amount of the debt and to cause the same to be satisfied out of property in the state which the court has thereby drawn within its jurisdiction.[5] It has also been stated that service of summons on a nonresident defendant in the state of his or her residence under a statute authorizing such residence is sufficient to support any judgment except one in personam and dispenses with the necessity of constructive service.[6] Where the defendant does not have any property within the state, it is questionable whether the court should exercise jurisdiction in a creditor's bill action.[7]

With regard to the situs of a debt for jurisdictional purposes in a creditor's bill to reach a debt owing to a nonresident defendant, there is authority to the effect that debts owing to nonresidents, although represented by notes and mortgages, have their situs at the domicil of the debtor for the purpose of creditors' bills in favor of those to whom the creditor is indebted,[8] but there is also authority that the situs of the debt is at the domicil of the creditor, or, as otherwise stated, a debt has no situs and follows the person of the owner.[9]

Footnotes

1 As to such matters, generally, see, Am. Jur. 2d, Actions[WestlawNext®(r) Search Query]; Am. Jur. 2d, Appellate Review[WestlawNext®(r) Search Query]; Am. Jur. 2d, Equity[WestlawNext®(r) Search Query]; Am. Jur. 2d, Evidence[WestlawNext®(r) Search Query]; Am. Jur. 2d, Parties[WestlawNext®(r) Search Query]; Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query]; Am. Jur. 2d, Trial[WestlawNext®(r) Search Query]; Am. Jur. 2d, Venue[WestlawNext®(r) Search Query].

2 McElfresh v. McElfresh, 8 Ohio L. Abs. 254, 1929 WL 2317 (Ct. App. 2d Dist. Montgomery County 1929). A creditor's bill may be brought as a separate lawsuit. Fleming Companies, Inc. v. Rich, 978 F. Supp. 1281 (E.D. Mo. 1997).

3 § 2.

4 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

5 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

6 Miller v. Maryland Casualty Co., 207 Ark. 312, 180 S.W.2d 581 (1944).

7 North Pacific S. S. Co. v. Guarisco, 293 Or. 341, 647 P.2d 920 (1982).

8 Bragg v. Gaynor, 85 Wis. 468, 55 N.W. 919 (1893).

9 Holbrook v. Ford, 153 Ill. 633, 39 N.E. 1091 (1894).

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§ 56. Practice and procedure generally; jurisdiction and venue—Jurisdictional amount

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Where suit is brought by creditors for distribution of a fund, in the nature of a trust fund, the amount of their joint claims or of the fund to be distributed is the test of jurisdiction.[1] Where, however, the claims of the creditors uniting in a creditor's bill are separate and independent of each other, are founded upon different contracts, upon judgments obtained at different times, and the allowance or rejection of one in no manner affects the others, each separate claim furnishes the jurisdictional test, and if none of the claims confer jurisdiction, the bill will be dismissed.[2] On the other hand, if one of the claims united in a creditor's bill exceeds the jurisdictional amount, jurisdiction is not lost because one of the claims joined is less than the jurisdictional amount.[3] Moreover, a creditor holding a claim less than the jurisdictional amount is permitted to intervene in a creditor's suit involving the requisite amount.[4]

Footnotes

1 Handley v. Stutz, 137 U.S. 366, 11 S. Ct. 117, 34 L. Ed. 706 (1890).

2 Umbarger v. Watts, 66 Va. 167, 25 Gratt. 167, 1874 WL 5613 (1874).

3 Huff v. Bidwell, 151 F. 563 (C.C.A. 5th Cir. 1907).

4 Huff v. Bidwell, 151 F. 563 (C.C.A. 5th Cir. 1907).

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A. In General

§ 57. Limitation of actions; laches

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Whether a creditor's bill may be barred by a statute of limitations depends generally upon the provisions and effect, in the particular jurisdiction, of statutes of limitation.[1] Some jurisdictions apply the statute of limitations applicable to execution on a judgment,[2] or for a garnishment proceeding[3] to a creditor's bill. In any event, it appears that a cause of action to reach an equitable interest for the purpose of satisfying a judgment does not accrue until the return of execution unsatisfied, and is not barred until the statutory period of limitations has run following such return.[4]

That the statute of limitations has run against the claim of the creditor is, of course, a defense which may, in a proper case, be interposed by the defendant.[5] Moreover, there is some authority to the effect that an original complainant in a suit in the nature of a creditor's bill may rely upon the statute of limitations in opposition to the claims of other creditors who have come in since the institution of the suit.[6]

The equitable doctrine of laches applies to creditors' suits in the same way as it applies to other actions of an equitable nature.[7] Accordingly, lapse of time and change of position as a result thereof may preclude creditors from invoking the equitable remedies

of the court for the enforcement of their rights, which, if freshly pursued, would be available.[8] However, laches may not be a defense where continuing fraud is involved.[9]

Footnotes

1 As to the effect of the dormancy of a judgment on the creditor's right to bring an equitable on, see § 12.

2 Giove v. Stanko, 49 F.3d 1338 (8th Cir. 1995) (applying Nebraska law); First Nat. Bank in Mitchell v. Daggett, 242 Neb. 734, 497 N.W.2d 358 (1993).

3 Shockley v. Harry Sander Realty Co., Inc., 771 S.W.2d 922 (Mo. Ct. App. E.D. 1989) (10 years).

4 Taylor v. Bowker, 111 U.S. 110, 4 S. Ct. 397, 28 L. Ed. 368 (1884).

5 Strike v. McDonald, 2 H. & G. 191, 1828 WL 629 (Md. 1828).

6 Strike v. McDonald, 2 H. & G. 191, 1828 WL 629 (Md. 1828).

7 As to the doctrine of laches in equity, generally, see Am. Jur. 2d, Equity[WestlawNext®(r) Search Query].

8 Donovan v. Armour & Co., 160 Fla. 62, 33 So. 2d 601 (1948).

9 Robinson v. Springfield Co., 21 Fla. 203, 1885 WL 1761 (1885).

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A. In General

§ 58. Abatement or survival

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According to some authorities, the death of the debtor extinguishes the right of the creditor to prosecute a pending creditor's bill, when no lien exists,[1] but in those jurisdictions where the plaintiff in a creditor's action acquires, by the commencement of the suit, a lien upon the choses in action and equitable assets of the debtor, it has been stated that this lien is not displaced or defeated by the death of the debtor before judgment.[2]

It is commonly held that a creditor's bill filed by one creditor on behalf of him- or herself and all other creditors who may join therein does not generally preclude another creditor, not a party to the first bill, from proceeding by an original creditor's bill.[3]

Footnotes

1 Saginaw County Sav. Bank v. Duffield, 157 Mich. 522, 122 N.W. 186 (1909); Newman v. Haggard, 167 Tenn. 542, 72 S.W.2d 549 (1934).

2 § 81.

3 Am. Jur. 2d, Abatement, Survival and Revival[WestlawNext®(r) Search Query].

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A. In General

§ 59. Conduct and dismissal of suit

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Proceedings on a creditor's bill involve a full trial complete with responsive pleadings and discovery.[1] The general rule that the plaintiff in an action has the power to control the prosecution thereof, at least until an application has been made to intervene, applies ordinarily to a creditor's bill brought by a creditor for the benefit of him- or herself and other creditors, and such a suit is under the control of the plaintiff up to the time a decree is rendered therein if no application is made by another creditor to intervene.[2] However, after an order or decree has been made in the suit,[3] or after other creditors have been made parties plaintiff, the original plaintiff does not, as a rule, have the same right to control the suit as he or she previously enjoyed; the original plaintiff is not permitted to jeopardize the interest of other creditors through his or her neglect of the case, and control of the suit may be taken from him or her and given to another person.[4]

Ordinarily, one who brings suit against the debtor, for him- or herself and other creditors, has the right to dismiss the suit before others interested have taken steps to become parties and before the court has made any order or decree affecting their rights.[5] On the other hand, the plaintiff is not permitted to dismiss the suit after other creditors have intervened or been brought into the case as plaintiffs[6] or after a decree or order, such as one granting an injunction or appointing a receiver or referee, made for the benefit of interested persons other than the plaintiff, has been rendered if they object to such action on his part.[7]

Footnotes

1 Equisearch, Inc. v. Lopez, 722 P.2d 426 (Colo. App. 1986).

2 Hallett v. Moore, 282 Mass. 380, 185 N.E. 474, 91 A.L.R. 572 (1933).

3 Catron v. Bostic, 123 Va. 355, 96 S.E. 845 (1918).

4 Manning v. Mercantile Trust Co., 37 Misc. 215, 75 N.Y.S. 168 (Sup 1902).

5 Hirshfeld v. Fitzgerald, 157 N.Y. 166, 51 N.E. 997 (1898).

6 La Tourette v. Fletcher, 6 App. D.C. 324, 1895 WL 11753 (App. D.C. 1895).

7 Belmont Nail Co v. Columbia Iron & Steel Co, 46 F. 336 (C.C.W.D. Pa. 1891).

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B. Parties

§ 60. Parties plaintiff

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As a general rule, a creditor may file and maintain a creditor's bill for his or her own interest without reference to other creditors.[1] Other judgment creditors who have not filed such a bill, or acquired a lien otherwise on the assets which the plaintiff seeks to have applied to the payment of his judgment, are not necessary parties, at least where their presence is not necessary for the protection of the defendant.[2] However, in certain situations, as, for example, where property is deemed to be held in trust for creditors, a bill must be filed in behalf of creditors generally and not merely in the interest of a particular creditor.[3]

Pursuant to traditional equity practice, a creditor's bill generally can be brought only by a creditor who has already obtained a judgment establishing the debt.[4]

Footnotes

1 Commissioners Freedman's Savings & Trust Co. v. Earle, 110 U.S. 710, 4 S. Ct. 226, 28 L. Ed. 301 (1884); Hall v. Henderson, 114 Ala. 601, 21 So. 1020 (1897).

2 Seymour v. McAvoy, 121 Cal. 438, 53 P. 946 (1898).

3 Arnold v. Hagerman, 45 N.J. Eq. 186, 17 A. 93 (Ct. Err. & App. 1889).

4 Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999).

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B. Parties

§ 61. Parties plaintiff—Joinder; class suits

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Although, as a general rule, a creditor may maintain a creditor's bill for his or her own interest, and other judgment creditors who have not filed such a bill or acquired a lien otherwise on the assets sought to be seized are not necessary parties thereto, creditors by several judgments are permitted to join as complainants in a creditor's bill against the same debtor where they have a common interest in obtaining the relief sought.[1] In some jurisdictions each creditor joined as a plaintiff must have secured a judgment against the defendant upon which execution has been issued and returned unsatisfied.[2] However, it is sometimes stated that where there are several creditors and the remedies at law have been exhausted as to one, relief may be granted as to all.[3]

To avoid inconvenience from joining a great number of individuals as plaintiffs in the one case and to avoid a multiplicity of suits in the other, courts of equity will allow one creditor to file a bill for him- or herself and all others standing in the same situation, as judgment creditors whose executions have been returned unsatisfied and who may choose to come in under the decree and contribute to the expenses of the suit.[4] In some situations, moreover, a creditor has been required to file his or her bill on behalf of all creditors in order to maintain it successfully.[5]

Footnotes

1 Ratliff v. Nowery, 102 Fla. 1072, 136 So. 895 (1931); Roy Mitchell Contracting Co. v. Mueller Co., 326 S.W.2d 522 (Tex. Civ. App. Texarkana 1959), writ refused n.r.e., (Nov. 4, 1959).
As to the right of a creditor to control or dismiss a suit brought on behalf of both himself and other creditors, see § 59.

2 § 24.

3 § 24.

4 Seaver v. Bigelows, 72 U.S. 208, 18 L. Ed. 595, 1866 WL 9398 (1866); Auburn Automobile Co. v. Namor Corp., 106 Fla. 594, 143 So. 604 (1932).

5 § 60.

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B. Parties

§ 62. Parties defendant

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The plaintiff or judgment creditor bringing a creditor's bill is required to file a complaint against and serve as a party defendant the person alleged to be holding the property of the judgment debtor or alleged to be indebted to the judgment debtor.[1] The judgment debtor is also ordinarily a necessary party defendant to a creditor's bill.[2]

In general, the plaintiff may join as defendants all persons whose rights may properly be ascertained and adjusted with a view to the proper application of the proceeds of the property sought to be reached.[3] Necessary parties defendant should be joined,[4] but those whose interests are fully represented by parties before the court,[5] or whose interests in the subject matter of the bill cannot be affected in the creditor's proceeding,[6] are not necessary parties. Nor are other judgment creditors who have not filed a creditor's bill or acquired a lien otherwise on the assets sought to be seized necessary parties.[7]

Footnotes

1 In re Osgood, 203 B.R. 865 (Bankr. D. Mass. 1997) (statutory action analogous to creditor's bill); Powell v. Grewing, 562 N.W.2d 761 (Iowa 1997).

2 Gaylords v. Kelshaw, 68 U.S. 81, 17 L. Ed. 612, 1863 WL 6637 (1863); In re Osgood, 203 B.R. 865 (Bankr. D. Mass. 1997) (statutory action analogous to creditor's bill).

3 Bragg v. Gaynor, 85 Wis. 468, 55 N.W. 919 (1893).

4 Goodman v. Niblack, 102 U.S. 556, 26 L. Ed. 229, 1880 WL 18898 (1880) (assignees are necessary parties to a bill by a creditor to reach a fund arising from the claims included in an assignment for the benefit of creditors).

5 Chicago, R.I. & P.R. Co. v. Howard, 74 U.S. 392, 19 L. Ed. 117, 1868 WL 11086 (1868).

6 Ogilvie v. Knox Ins. Co., 63 U.S. 380, 22 How. 380, 16 L. Ed. 349, 1859 WL 10649 (1859); McColcan v. Walter Magee, 172 Cal. 182, 155 P. 995 (1916).

7 § 60.

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§ 63. Intervention

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In accordance with the general principles concerning intervention in civil actions,[1] judgment creditors, on proper application, are ordinarily permitted to come in and make themselves parties to a creditor's bill, and need not resort to independent proceedings.[2] Some courts have held, moreover, that this right is not confined to creditors whose claims have been reduced to judgment.[3] Other courts, however, have denied to simple contract creditors the right to intervene,[4] at least where the case is one in which the creditors are required to have exhausted their legal remedies against the debtor.[5]

One who intervenes in a creditor's suit ordinarily must come into the case as it exists and conform to the pleadings as he or her finds them.[6] He or she is not ordinarily permitted to raise issues whose disposition will interfere with a prompt determination of the original plaintiff's case.[7] In some cases, however, the court may allow intervention for the assertion of a claim that is hostile to the plaintiff's claim; for instance, where property sought by a creditor's suit is a concealed asset of a third person rather than of the debtor, intervention is proper to allow the independent claim of the true owner to the property.[8] In addition, a creditor may intervene to assert a priority in the debtor's assets.[9]

Intervention, when proper, is allowed at almost any stage of the proceedings and, in special circumstances, even after decree, if the applicants can show an interest in the common fund.[10]

Footnotes

1 Am. Jur. 2d, Parties[WestlawNext®(r) Search Query].

2 Stewart v. Dunham, 115 U.S. 61, 5 S. Ct. 1163, 29 L. Ed. 329 (1885); Johnson v. Waters, 111 U.S. 640, 4 S. Ct. 619, 28 L. Ed. 547 (1884); Myers v. Fenn, 72 U.S. 205, 18 L. Ed. 604, 1866 WL 9391 (1866).

3 Merchants' Nat. Bank v. McDonald, 63 Neb. 363, 88 N.W. 492 (1901); Fuqua v. Trego, 1943-NMSC-004, 47 N.M. 34, 133 P.2d 344 (1943).

4 Horn v. Volcano Water Co., 13 Cal. 62, 1859 WL 951 (1859).

5 §§ 4 to 24.

6 Booth v. State, 131 Ga. 750, 63 S.E. 502 (1908); Hallett v. Moore, 282 Mass. 380, 185 N.E. 474, 91 A.L.R. 572 (1933).

7 Hallett v. Moore, 282 Mass. 380, 185 N.E. 474, 91 A.L.R. 572 (1933).

8 Little v. Saffer, 110 Fla. 230, 148 So. 573 (1933).

9 Eldridge v. Post, 20 Fla. 579, 1884 WL 2080 (1884).

10 Seaver v. Bigelows, 72 U.S. 208, 18 L. Ed. 595, 1866 WL 9398 (1866).

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C. Pleading

§ 64. Bill or complaint, generally

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Forms

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In accordance with the general principles of pleading, the plaintiff in a creditor's bill should allege clearly and definitely every fact that is necessary to entitle him or her to relief.[1] If the complainant intends to establish his or her case by showing fraud, a specific statement thereof should be made; a mere general statement of fraud is not sufficient.[2] A mere general allegation that there is no remedy at law or no adequate remedy at law is insufficient.[3] However, it is unnecessary for judgment creditors to allege that they had no adequate remedy at law where facts were alleged from which the court could draw the conclusion that there was no adequate remedy at law.[4] On the other hand, if the bill or complaint discloses the existence of an adequate remedy at law, it will be dismissed on demurrer.[5]

Footnotes

1 Miller v. Security-Peoples Trust Co., 142 Fla. 434, 195 So. 191, 129 A.L.R. 500 (1940).

2 Morgan Bros. v. Dayton Coal & Iron Co., 134 Tenn. 228, 183 S.W. 1019 (1916).

As to the provisions of the Federal Rules of Civil Procedure requiring that in all averments of fraud the circumstances of the fraud must be stated with particularity, see Am. Jur. 2d, Fraud and Deceit[WestlawNext®(r) Search Query].

3 Miller v. Security-Peoples Trust Co., 142 Fla. 434, 195 So. 191, 129 A.L.R. 500 (1940); Stewart v. Manget, 132 Fla. 498, 181 So. 370 (1938).

4 Blattel v. Stallings, 346 Mo. 450, 142 S.W.2d 9 (1940).

5 Herrlich v. Kaufmann, 99 Cal. 271, 33 P. 857 (1893).

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C. Pleading

§ 65. Allegation of judgment

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Since the general rule is that a creditor must obtain a judgment establishing the measure and validity of his demand before he can maintain a creditor's bill,[1] the bill must ordinarily set forth a judgment rendered in a court of the state in which the suit is brought,[2] or a federal court judgment,[3] or make allegations showing that it is impossible to obtain such a judgment in any court within the state.[4] A mere allegation by a creditor that the validity of his or her claim is undisputed does not amount to an affirmative allegation that the validity and amount of his or her claim has been acknowledged or admitted by the debtor so as to bring the creditor within the rule that it is unnecessary to obtain a judgment at law under circumstances where the claim is admitted.[5] However, where, by statute, a creditor's bill may be commenced in equity before a judgment at law has been granted,[6] the plaintiff need only allege sufficient facts to show that there has been a commencement of a suit at law.[7]

Practice Tip:

Since the judgment against a debtor establishes his or her liability to pay the debt, the bill need not allege the indebtedness upon which the judgment therein set out was recovered.[8]

Footnotes

1 § 8.

2 National Tube Works Co. v. Ballou, 146 U.S. 517, 13 S. Ct. 165, 36 L. Ed. 1070 (1892); Foster v. Evans, 384 Mass. 687, 429 N.E.2d 995 (1981).

3 § 14.

4 National Tube Works Co. v. Ballou, 146 U.S. 517, 13 S. Ct. 165, 36 L. Ed. 1070 (1892); Miller v. Maryland Casualty Co., 207 Ark. 312, 180 S.W.2d 581 (1944).

5 Buckley v. Maupin, 344 Mo. 193, 125 S.W.2d 820 (1939).

6 § 9.

7 Davis v. Turner, 147 So. 224 (Fla. 1932).

8 Tatum v. Rosenthal, 95 Cal. 129, 30 P. 136 (1892).

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C. Pleading

§ 66. Allegation of exhaustion of remedies at law

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Where the general rule that the plaintiff in a creditor's action must exhaust his or her legal remedies before he or she is entitled to maintain an equitable action applies,[1] the bill or complaint should aver, where an attempt is made by a process in equity to reach equitable interests, choses in action, or the avails of property fraudulently conveyed, that judgment has been obtained and that execution has been issued and that it has been returned by an officer without satisfaction,[2] or such facts must be set out as will excuse a failure in this regard.[3] Where a creditor's bill is based on a judgment obtained in the state but predicated on a judgment rendered in another state, it need not, in addition to alleging that all legal means of satisfying the domestic judgment have proved unavailing, also allege that all means of satisfying the judgment of the other state have proved unavailing.[4]

Footnotes

1 §§ 4 to 24.

2 Taylor v. Bowker, 111 U.S. 110, 4 S. Ct. 397, 28 L. Ed. 368 (1884); Case v. Beauregard, 101 U.S. 688, 25 L. Ed. 1004, 1879 WL 16717 (1879); Foster v. Evans, 384 Mass. 687, 429 N.E.2d 995 (1981).

The complainant must aver generally that the judgment debtor does not have sufficient personal or real property subject to levy on execution to satisfy the judgment. Graybar Elec. Co. v. Keller Elec. Co., 113 Ohio App. 3d 172, 680 N.E.2d 687 (9th Dist. Summit County 1996).

3 Case v. Beauregard, 101 U.S. 688, 25 L. Ed. 1004, 1879 WL 16717 (1879); Spencer v. Anderson, 193 Cal. 1, 222 P. 355, 35 A.L.R. 822 (1924).

Generally, as to what circumstances will excuse exhaustion of legal remedies, see §§ 19 to 24.

4 Miller v. Security-Peoples Trust Co., 142 Fla. 434, 195 So. 191, 129 A.L.R. 500 (1940).

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§ 67. Description of property to be reached

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The property to be reached by a creditor's bill must be described with certainty,[1] except that where the character of the property is unknown, the creditor's bill should seek a discovery, alleging the existence of the property and the fact that its nature and character or location are unknown and concealed.[2] It has also been found that a judgment creditor may demand from his or her debtor a disclosure of the debtor's assets, and the names of his or her debtors, in general terms.[3]

If the petition for a creditor's bill is legally deficient because it fails to allege an interest in property which can lawfully be reached by a creditor's bill, it necessarily follows that no lien can arise from its filing.[4]

Footnotes

1 Riesen v. Maryland Casualty Co., 153 Fla. 205, 14 So. 2d 197 (1943); George E. Sebring Co. v. O'Rourke, 101 Fla. 885, 134 So. 556 (1931).

2 Davenport & Harris Funeral Homes v. Kennedy, 243 Ala. 613, 11 So. 2d 379 (1943).

3 Bay State Iron Co. v. Goodall, 39 N.H. 223, 1859 WL 3791 (1859).

4 Doksansky v. Norwest Bank Nebraska, N.A., 260 Neb. 100, 615 N.W.2d 104 (2000).

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§ 68. Answer

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Where the plaintiff alleges that the defendant has no property on which to levy, the proper manner in which to controvert such negative averment is to affirm that he or she has such property.[1] It is ordinarily a condition precedent to the filing of a creditor's bill that the complainant must have exhausted his or her remedies at law before coming into equity,[2] and it is therefore a sufficient answer to the bill that the debtor has property subject to execution from which the demand may be fully satisfied.[3] An objection that the demands of the complainant had not been reduced to judgment and execution before filing the bill has been held a defense personal to the defendant which may be waived by failure to interpose it at the proper time.[4]

A defendant alleged to be indebted to the judgment debtor may, in the judgment creditor's suit, interpose any defense he may have against the judgment debtor. Conversely, if the defense interposed would not be a good defense to an action instituted by the judgment debtor, it will not operate as a valid defense to a suit by the judgment creditor.[5]

Footnotes

1 Bomberger v. Turner, 13 Ohio St. 263, 1862 WL 15 (1862).

2 §§ 4 to 24.

3 Graybar Elec. Co. v. Keller Elec. Co., 113 Ohio App. 3d 172, 680 N.E.2d 687 (9th Dist. Summit County 1996).

4 Hollins v. Brierfield Coal & Iron Co., 150 U.S. 371, 14 S. Ct. 127, 37 L. Ed. 1113 (1893); Day v. Washburn, 65 U.S. 352, 24 How. 352, 16 L. Ed. 712, 1860 WL 9978 (1860); Thomas v. Richards, 13 Ill. 2d 311, 148 N.E.2d 740 (1958).

5 Spencer v. Anderson, 193 Cal. 1, 222 P. 355, 35 A.L.R. 822 (1924).
Generally, as to the derivative nature of a judgment creditor's claim, see § 25.

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§ 69. Amendments; supplemental bills

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A creditor's bill, if insufficient to sustain a creditor's suit, may be amended so as to make it sufficient.[1] Amendments in such cases are ordinarily allowed under the same circumstances and conditions as in other equity suits,[2] and the court may permit an amendment of a creditor's bill for the purpose of making it more certain and definite.[3] An amendment is not objectionable as adding a new and distinct cause of action where it is germane to the original cause of action and seeks to make a third person a party defendant in order to enable the court to grant complete relief with respect to the subject matter of the creditor's bill.[4] If, because of a statute providing that no relief in equity may be granted to the creditor of a beneficiary in respect to trust funds where the trust has been created by some person other than the debtor, a creditor's bill may not be maintained, it may be amended to an action at law.[5]

The function of a supplemental bill in equity is to support the cause of the suit existing when the original bill was filed; changes in circumstances, occurring after the filing of the original bill, may properly be brought before the court by amendment or by supplemental bill in the nature of an amendment.[6] After-acquired property of the principal defendant to a creditor's bill can be reached only by filing a supplemental bill.[7]

Footnotes

1 Hollingsworth v. Arcadia Citrus Growers Ass'n, 154 Fla. 399, 18 So. 2d 159 (1944).

2 Hollingsworth v. Arcadia Citrus Growers Ass'n, 154 Fla. 399, 18 So. 2d 159 (1944).

3 Leavitt v. Dimond, 227 Mass. 216, 116 N.E. 410 (1917); Kinney v. Craig, 103 Va. 158, 48 S.E. 864 (1904).

4 Harper v. Atlanta Mill. Co., 203 Ga. 608, 48 S.E.2d 89 (1948).

5 Brahmey v. Rollins, 87 N.H. 290, 179 A. 186, 119 A.L.R. 8 (1935).

6 Bethlehem Fabricators v. H.D. Watts Co., 286 Mass. 556, 190 N.E. 828, 93 A.L.R. 1124 (1934).

7 Newlove v. Pennock, 123 Mich. 260, 82 N.W. 54 (1900).

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§ 70. Evidence generally; burden of proof

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In a proceeding by a creditor's bill to subject to the payment of a debt property of the debtor not reachable on execution, the plaintiff must establish his or her case not only by his or her pleadings, but by proof.[1] A case must be made both in the bill or complaint[2] and by proof, which will entitle the creditor to subject the property of his or her debtor, not reachable on execution, to the payment of his or her debts.[3] In accord with the substantive rule which generally requires a creditor to exhaust his or her legal remedies before seeking the aid of equity through a creditor's bill,[4] he or she must ordinarily prove that a judgment has been recovered on his or her debt and execution returned unsatisfied[5] or that an execution would have been unavailing.[6] Further, the plaintiff has the burden of showing that the assets he or she seeks to subject to payment of his or her claim are the property of the debtor.[7] Where the judgment creditor is allowed to file an action without proof of return of execution unsatisfied by alleging that the judgment debtor has insufficient assets to satisfy the judgment, if the judgment debtor denies that he or she lacks sufficient assets, the burden is on the judgment creditor to offer evidence of such fact.[8]

The return upon execution that no property can be found establishes, prima facie at least, the exhaustion of legal remedies, and the burden is on the defendant to overcome the presumption by other evidence; some cases hold that the return is conclusive as to whether the creditor's remedy at law has proved effectual.[9] In addition, proof of the recovery of judgment is sufficient to cast the burden of proof of payment of the indebtedness covered thereby on the defendant.[10]

Footnotes

1 National Bank of Commerce v. Appel Clothing Co., 35 Colo. 149, 83 P. 965 (1905).

2 §§ 64 to 69.
3 National Bank of Commerce v. Appel Clothing Co., 35 Colo. 149, 83 P. 965 (1905).
4 § 4.
5 Jones v. Green, 68 U.S. 330, 17 L. Ed. 553, 1863 WL 6623 (1863).
6 O'Brien v. Stambach, 101 Iowa 40, 69 N.W. 1133 (1897).
7 Shedd v. Oliver, 144 Fla. 775, 198 So. 692 (1940); Publicity Bldg. Realty Corp. v. Thomann, 353 Mo. 493, 183 S.W.2d 69 (1944).
8 Graybar Elec. Co. v. Keller Elec. Co., 113 Ohio App. 3d 172, 680 N.E.2d 687 (9th Dist. Summit County 1996).
9 § 18.
10 O'Brien v. Stambach, 101 Iowa 40, 69 N.W. 1133 (1897).

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§ 71. Proof of solvency or insolvency

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The opinions of witnesses as to the solvency or insolvency of a debtor are usually inadmissible in creditors' suits.[1] The insolvency of the debtor may be proved by showing that he is a nonresident and was known by neighbors to have had some exempt property but no property that could be reached by a creditor's bill.[2]

Footnotes

1 Brice v. Lide, 30 Ala. 647, 1857 WL 441 (1857); Babcock v. Middlesex Sav. Bank & Bldg. Ass'n, 28 Conn. 302, 1859 WL 1276 (1859).
As to what constitutes insolvency generally, see Am. Jur. 2d, Insolvency[WestlawNext®(r) Search Query].

2 Tittman v. Thornton, 107 Mo. 500, 17 S.W. 979 (1891).

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§ 72. Weight and sufficiency

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However sufficient the bill may be to entitle the complainant to relief, the decree based thereon, to be sustained, must be supported by the evidence,[1] and, moreover, such evidence must be clear, unequivocal, and decisive.[2] A suit will fail where the burden of proof of the issuance and return unsatisfied of an execution is required of the plaintiff,[3] and no proof of these facts is produced at the trial.[4] There is, moreover, authority to the effect that the absence of such proof on the part of a plaintiff is not remedied by the fact that his bill was consolidated with that of another creditor who furnished such proof in reference to his claim;[5] but in this respect it should be noted that some authority holds that where there are several creditors, and the claim of one has been reduced to judgment and the remedy at law exhausted, even a judgment is not required as a condition precedent to equitable relief on the claim of another creditor.[6]

The judgment upon which a creditor's suit is based is held to be conclusive evidence in such suit, as against other creditors of the defendant, of the plaintiff's status as a creditor and the amount of the indebtedness owing him or her, provided it is not impeached for fraud, collusion, or other cause rendering it void.[7] Even the judgment of a foreign court is some evidence of an indebtedness and should be given full faith and credit for this purpose.[8]

Footnotes

1 Morgan Bros. v. Dayton Coal & Iron Co., 134 Tenn. 228, 183 S.W. 1019 (1916).

2 Brazelton v. Lewis, 1943 OK 112, 192 Okla. 568, 137 P.2d 905 (1943).

3 § 70.

4 Jones v. Green, 68 U.S. 330, 17 L. Ed. 553, 1863 WL 6623 (1863).

5 Russell v. Chicago Trust & Savings Bank, 139 Ill. 538, 29 N.E. 37 (1891).

6 § 24.

7 Candee v. Lord, 2 N.Y. 269, 1849 WL 5323 (1849).

8 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

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§ 73. Judgment and relief generally

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Where the parties and subject matter are before the court in a creditor's suit, it will determine the validity of assignments and transfers by the debtor with the view of uncovering property that is capable of being levied on.[1] Where other creditors have come in after the filing of a bill in behalf of all creditors, the court will pass on the rights of all creditors before it.[2] The principle that equity will retain jurisdiction to award complete relief between the parties, however, is not carried to the extreme of awarding relief that is strictly legal in nature against a party who was joined as a defendant with the debtor but was obligated neither legally nor equitably to the plaintiff at the commencement of the action.[3] The court may, under circumstances requiring it, render a conditional decree.[4] Where it appears from the evidence in a creditor's suit that the creditor possesses collateral security for a portion of his or her debt, the court may require the creditor to exhaust such security before subjecting the other property of the debtor.[5] Where a judgment creditor brings an action in the nature of a creditor's bill to enforce collection of a judgment, and the defendant during the pendency of the action, by unconditional purchase in good faith, becomes the absolute and beneficial owner of an existing judgment against the plaintiff and seeks by appropriate procedure to have such judgment set off against the plaintiff's judgment, the court, in the exercise of a sound discretion based upon principles of equity, may allow the setoff.[6] However, the court has no authority to order a judgment debtor to make payments in installments out of income he or she receives, unless the judgment debtor so moves.[7]

As is the rule generally,[8] persons not parties or privies are not bound by the judgment in a creditor's suit, although parties and privies are bound. Persons recording a preexisting deed after the filing of a lis pendens in the creditor's suit affecting title to the property are purchasers pendente lite, so as to be bound by the judgment, where a deed takes effect as against subsequent encumbrances only from the time of record.[9]

Footnotes

1 Shipley v. Browning, 114 W. Va. 409, 172 S.E. 149, 91 A.L.R. 643 (1933).

2 Stewart v. Dunham, 115 U.S. 61, 5 S. Ct. 1163, 29 L. Ed. 329 (1885).
Individual creditors, as a matter of judicial efficiency and fairness to all parties, would not be allowed to bring individual actions or proceedings against a foreign reinsurance company in courts throughout the United States pursuant to a court sanctioned scheme of arrangement between the company and its creditors under the law of Bermuda; although there was an arbitration agreement between the company and the creditor and United States policy favored arbitration agreements, according comity to the Bermuda injunction was consistent with, and certainly would not violate, United States public policy. In re Petition of Bd. of Directors of Hopewell Intern. Insurance Ltd., 275 B.R. 699 (S.D. N.Y. 2002).

3 Smith v. Bourbon County, 127 U.S. 105, 8 S. Ct. 1043, 32 L. Ed. 73 (1888).

4 McEntire v. McEntire, 107 Ohio St. 510, 1 Ohio L. Abs. 405, 140 N.E. 328 (1923).

5 Barret v. Reed, Wright 700 (Ohio 1834).

6 Montalto v. Yeckley, 143 Ohio St. 181, 28 Ohio Op. 107, 54 N.E.2d 421 (1944).

7 Kuykendall v. Wheeler, 890 S.W.2d 785 (Tenn. 1994).

8 Am. Jur. 2d, Judgments[WestlawNext®(r) Search Query].

9 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

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§ 74. Appropriation and sale of debtor's property

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Where a creditor's bill has been filed, the court has power to decree satisfaction of the sum due the plaintiff on his or her judgment, out of any personal property, money, or choses in action belonging to the defendant which may have been discovered by the proceedings.[1]

Observation:

Mere potential for problems in some cases, such as serious disruption of business that might occur if a debtor's joint venture interest were to be seized outright by a creditor, for which tailored solutions are usually possible, is no reason to bar application of a reach and apply statute from the start.[2]

The amount due to the complainant, and for which the property is held liable, should be fixed before the sale, since otherwise a greater quantity of property may be sold than is requisite to pay the debt.[3] In some cases it may be necessary to meet a statutory requirement that before the property of a judgment debtor may be ordered sold to satisfy his or her debts, it must be found that the income by way of rent to accrue from all the debtor's real estate subject to judgment liens within five years will not be sufficient to extinguish such liens.[4] In those cases, the court should ascertain from the pleadings and proof whether the debtor's

property will rent for sufficient amount to pay the debts within the period prescribed.[5] Land must have a rental value in order to come within the meaning of such a statute.[6]

Footnotes

1 Bethlehem Fabricators v. H.D. Watts Co., 286 Mass. 556, 190 N.E. 828, 93 A.L.R. 1124 (1934); Saginaw County Sav. Bank v. Duffield, 157 Mich. 522, 122 N.W. 186 (1909).

2 Tilcon Capaldi, Inc. v. Feldman, 249 F.3d 54 (1st Cir. 2001).

3 Cohen v. Carroll, 13 Miss. 545, 5 S. & M. 545, 1846 WL 1611 (1846).

4 First Nat. Bank of Northfork v. Godfrey, 94 W. Va. 1, 117 S.E. 680, 30 A.L.R. 1054 (1923); Morris v. Baird, 72 W. Va. 1, 78 S.E. 371 (1913).

5 Morris v. Baird, 72 W. Va. 1, 78 S.E. 371 (1913).

6 Morris v. Baird, 72 W. Va. 1, 78 S.E. 371 (1913).

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§ 75. Personal judgment or decree

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Inasmuch as equity acts in personam, where the person of the debtor is within its jurisdiction, it may compel appropriate action on the part of the debtor to render its decree effective; therefore, where a patent or copyright is subjected to the claim of a creditor, the court may require the debtor to execute such assignment as may be necessary to vest title in the purchaser or purchasers, in conformity with the patent or copyright laws, and appoint a trustee to execute an assignment if the patentee should not conform.[1]

Where the suit is brought to subject assets in the hands of third persons to the payment of a judgment debt, a personal judgment will not be entered against them for the full amount of the creditor's claim in the absence of anything to show that they had become personally liable therefore.[2]

A judgment fixing the amount of the indebtedness of the defendant to the plaintiff and appropriating the former's property to the payment thereof may be granted since the proceeding is one in rem or in the nature of a proceeding in rem.[3] Moreover, a judgment otherwise valid as a judgment in rem is not rendered invalid because it purports to establish a personal liability.[4]

Footnotes

1 Ager v. Murray, 105 U.S. 126, 26 L. Ed. 942, 1881 WL 19730 (1881); Stephens v. Cady, 55 U.S. 528, 14 How. 528, 14 L. Ed. 528, 1852 WL 6761 (1852).

2 Dunphy v. Kleinsmith, 78 U.S. 610, 20 L. Ed. 223, 1870 WL 12738 (1870) (overruled in part on other grounds by, Hornbuckle v. Toombs, 85 U.S. 648, 21 L. Ed. 966, 1873 WL 16070 (1873)).

3 § 2.

4 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

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§ 76. Attorney's fees and other allowances

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In creditors' suits the courts frequently apply the rule[1] that in the exercise of their equitable jurisdiction courts may allow a creditor, whose services have brought funds or property into court to be administered for the satisfaction of his or her claim and the claims of other creditors of the same class, reasonable compensation for the creditor and his or her attorneys to be paid from such funds or out of the proceeds of such property.[2] The fact that the services in maintaining a creditor's suit did not result in increasing the amount of funds distributable among all creditors, but merely increased the funds available to the class of creditors for the benefit of which the suit was brought, does not preclude the allowance of a fee out of the funds available for distribution to that class.[3] An attorney's fee may be allowed out of the fund reached by a creditor's bill instituted for, and resulting in, the benefit of all the creditors of an insolvent, notwithstanding that the existence of claims prior to that of the creditor bringing the suit precludes him or her from sharing in it as a distributee.[4] However, an allowance cannot be made from funds going to creditors having priority who are not benefited by the suit.[5] Moreover, the application of one creditor for the allowance of an attorney's fee will be denied if the services of the attorney are antagonistic to the other creditors, notwithstanding that he or she may have preserved or increased the fund to be administered.[6]

Allowances may be made to a creditor bringing a creditor's suit only out of the funds or property brought into, and administered by, the court, for the benefit of other creditors of the same class.[7] Allowances are made for the successful maintenance of a creditor's bill from the fund distributable among the creditors, and not from the surplus available after payment of all debts of the defendant.[8]

The amount to be allowed is peculiarly within the discretion of the chancellor or judge and, in the absence of any showing of an abuse of discretion, the allowance made must be affirmed.[9]

Footnotes

1 Am. Jur. 2d, Costs[WestlawNext®(r) Search Query].

2 Nolte v. Hudson Nav. Co., 47 F.2d 166 (C.C.A. 2d Cir. 1931); Gibbs v. Blackwelder, 346 F.2d 943, 9 Fed. R. Serv. 2d 37A.22, Case 1 (4th Cir. 1965).

3 Nolte v. Hudson Nav. Co., 47 F.2d 166 (C.C.A. 2d Cir. 1931).

4 Campbell v. Provident Sav. & Loan Soc., 61 S.W. 1090 (Tenn. Ch. App. 1900).

5 Muskegon Boiler Works v. Tennessee Valley Iron & R. Co., 274 F. 836 (M.D. Tenn. 1921).

6 Ford v. Gilbert, 44 Or. 259, 75 P. 138 (1904).

7 Morgan v. Grass Fibre Pulp & Paper Corporation, 11 F.2d 431 (S.D. Fla. 1926).

8 Huff v. Bidwell, 195 F. 430 (C.C.A. 5th Cir. 1912); German Nat. Ins. Co. v. Virginia State Ins. Co., 108 Va. 393, 61 S.E. 870 (1908).

9 Central Trust Co. of New York v. U.S. Light & Heating Co., 233 F. 420 (C.C.A. 2d Cir. 1916).

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§ 77. Ancillary remedies of injunction and receivership

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In order to make a creditor's suit effective, equity will, where necessary, employ the ancillary remedies of injunction and the appointment of a receiver,[1] although the lien of the creditor is usually held to be acquired by the commencement of the suit, and not by the issuance of an injunction or the order for a receiver or his appointment.[2] An injunction to prevent defendants from paying nonresident creditors, granted in a creditor's suit, sufficiently asserts dominion and control over the indebtedness to subject it to final judgment appointing a receiver.[3] No injunction will, however, be issued in a creditor's suit, unless a necessity therefor to save the rights of the creditor is apparent.[4]

Footnotes

1 Saginaw County Sav. Bank v. Duffield, 157 Mich. 522, 122 N.W. 186 (1909); Berger v. Loomis, 169 Or. 575, 131 P.2d 211, 144 A.L.R. 636 (1942).

2 § 80.

3 Bragg v. Gaynor, 85 Wis. 468, 55 N.W. 919 (1893).

4 Portland Bldg. Ass'n v. Creamer, 34 N.J. Eq. 107, 1881 WL 8412 (Ch. 1881).

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§ 78. Ancillary remedies of injunction and receivership —Appointment, title, and powers of receiver

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The appointment of a receiver in proceedings upon a creditor's bill is a usual practice and is almost a matter of course where the object of the bill is to reach personal assets.[1] Where a creditor's suit is brought to subject the proceeds of certain bills and accounts receivable of the debtor, the court may appoint a receiver for the purpose of collecting such bills and accounts receivable.[2] Moreover, the court has power, if necessary, to appoint a receiver of the share of a distributee of a decedent's estate in the interest of a creditor, and to require the executor or administrator to account to the receiver for such share.[3]

Even without an assignment by the debtor to the receiver appointed in a creditor's suit, the assets of the debtor, choses in action, and so forth, vest in such receiver by virtue of the order appointing him or her.[4] In contemplation of law, the title vests in the court when the action is commenced and passes as from that date to the receiver.[5] The court will not let the possession of the receiver, which is that of the court itself, be disturbed by anyone without its permission and one so interfering may be proceeded against as for a contempt.[6]

Footnotes

1 Bruton v. Tearle, 7 Cal. 2d 48, 59 P.2d 953, 106 A.L.R. 580 (1936).
Generally, as to when creditors may obtain the appointment of a receiver, see Am. Jur. 2d, Receivers[WestlawNext®(r) Search Query].

2 Fry v. Smith, 61 Ohio St. 276, 55 N.E. 826 (1899).

3 Fremont Farmers Union Co-op. Ass'n v. Markussen, 136 Neb. 567, 286 N.W. 784, 123 A.L.R. 1287 (1939).

4 Saginaw County Sav. Bank v. Duffield, 157 Mich. 522, 122 N.W. 186 (1909).

5 King v. Gooding, 130 Ill. 102, 22 N.E. 533 (1889).

6 Saginaw County Sav. Bank v. Duffield, 157 Mich. 522, 122 N.W. 186 (1909).

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§ 79. Liens and priorities generally

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As a general rule a creditor may obtain a priority as against other creditors of the same debtor as a reward for his or her diligence in pursuing in equity property of the debtor which cannot be reached at law.[1] The priority of a judgment creditor may be lost by neglect to sue out execution, as against a more vigilant judgment creditor who files a bill in equity.[2] Each of the complainants in several successive creditors' bills against the same defendant should be given priority over all creditors whose debts have not been reduced to judgment and priority among themselves in the order of the time of their filing of their respective bills.[3] Obviously, a complainant in a creditor's bill should not be granted a priority over other creditors of the same class where the bill was brought on behalf of the complainant and the other members of that class.[4]

While it may generally be necessary to obtain a judgment at law and exhaust the remedies thereon before acquiring a lien, the failure of the creditor to exhaust his or her legal remedies does not prevent the creditor from securing a priority through a creditor's bill where the case is one in which the failure to exhaust legal remedies is excused.[5]

If the petition for a creditor's bill is legally deficient because it fails to allege an interest in property which can lawfully be reached by a creditor's bill, it necessarily follows that no lien can arise from its filing.[6]

Footnotes

1 Commissioners Freedman's Savings & Trust Co. v. Earle, 110 U.S. 710, 4 S. Ct. 226, 28 L. Ed. 301 (1884); Matter of Leonard, 125 F.3d 543 (7th Cir. 1997); Gaib v. Gaib, 14 Ohio App. 3d 97, 470 N.E.2d 189 (10th Dist. Franklin County 1983).

2 Dargan v. Waring, 11 Ala. 988, 1847 WL 321 (1847).

3 Russell v. Chicago Trust & Savings Bank, 139 Ill. 538, 29 N.E. 37 (1891).

4 Trustees of Wabash & Erie Canal Co. v. Beers, 67 U.S. 448, 17 L. Ed. 327, 1862 WL 6755 (1862).

5 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

For situations in which exhaustion of legal remedies may be excused, see §§ 19 to 24.

6 Doksansky v. Norwest Bank Nebraska, N.A., 260 Neb. 100, 615 N.W.2d 104 (2000).

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§ 80. Time at which lien attaches

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West's Key Number Digest

West's Key Number Digest, Debtor and Creditor 11

The general rule is that where no specific lien has been acquired upon the property before suit, the filing of a creditor's bill in equity to reach equitable assets of the debtor, or at least the service of process upon the bill, will operate as a specific lien in the nature of an attachment or equitable levy upon the property sought to be charged and will confer priority of right to payment out of the proceeds as against other creditors or purchasers pendente lite.[1] The filing of the bill in cases of equitable execution is the beginning of executing it,[2] and the lien acquired is subject to all existing encumbrances and is superior to all liens attaching subsequently.[3]

Footnotes

1 Commissioners Freedman's Savings & Trust Co. v. Earle, 110 U.S. 710, 4 S. Ct. 226, 28 L. Ed. 301 (1884); First Nat. Bank in Mitchell v. Daggett, 242 Neb. 734, 497 N.W.2d 358 (1993); Gaib v. Gaib, 14 Ohio App. 3d 97, 470 N.E.2d 189 (10th Dist. Franklin County 1983).
The beginning of a creditor's action to subject an equitable estate to the payment of a judgment gives a specific lien upon the property which it is sought to reach. Doksansky v. Norwest Bank Nebraska, N.A., 260 Neb. 100, 615 N.W.2d 104 (2000).

2 Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041, 38 A.L.R. 259 (1924).

3 Commissioners Freedman's Savings & Trust Co. v. Earle, 110 U.S. 710, 4 S. Ct. 226, 28 L. Ed. 301 (1884); Gaib v. Gaib, 14 Ohio App. 3d 97, 470 N.E.2d 189 (10th Dist. Franklin County 1983).

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Creditors' Bills
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V. Liens and Priorities

§ 81. Duration of lien

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West's Key Number Digest

West's Key Number Digest, Debtor and Creditor 11

The lien acquired by the beginning of a proceeding by a creditor's bill continues while the cause is pending[1] and until final determination,[2] and is in effect confirmed when a decree is rendered for the relief sought.[3] The lien is not affected by the fact that the final decree is not rendered until long after the judgment at law has ceased to be a lien by force of statutory provisions.[4]

The lien that a judgment creditor obtains upon filing a creditor's bill survives the death of the debtor.[5] Even in a jurisdiction where the mere filing of the bill does not of itself give the complainant a lien upon the property as against other creditors, the issuance and service of an injunction or the regular appointment of a receiver will create a lien which, upon the death of the debtor, is superior to the claims of unsecured creditors and the rights of the personal representative.[6]

Footnotes

1 Doksansky v. Norwest Bank Nebraska, N.A., 260 Neb. 100, 615 N.W.2d 104 (2000).

2 First Nat. Bank in Mitchell v. Daggett, 242 Neb. 734, 497 N.W.2d 358 (1993).

3 Knower v. Central Nat. Bank, 124 N.Y. 552, 27 N.E. 247 (1891).
As to the effect of the dormancy of a creditor's judgment at law, see § 12.

4 Thomas v. Richards, 13 Ill. 2d 311, 148 N.E.2d 740 (1958).

5 Thomas v. Richards, 13 Ill. 2d 311, 148 N.E.2d 740 (1958); First Nat. Bank v. Shuler, 153 N.Y. 163, 47 N.E. 262 (1897).

6 Saginaw County Sav. Bank v. Duffield, 157 Mich. 522, 122 N.W. 186 (1909).

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Where the subject matter of a particular section of the prior edition of the article is now treated in another article, the title and section of that article is given. The reader should always consult the volume index for detailed information.

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